IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13752 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOHIL SHILPABEN KAMLESHKUMAR

Versus

DHAROLI GRAM PANCHAYAT

Appearance:

1. Special Civil Application No. 13752 of 2003

MS ARCHANA U AMIN for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1

MS PHALGUNI PATEL, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 14/10/2003

ORAL JUDGEMENT

In this matter, rule was issued on 19.09.2003 making it returnable on 01.10.2003. On 01.10.2003, the

respondent No.2 was joined as a party and notice was issued to the newly added party. Ms. Phalguni Patel, learned AGP appears and waives service of rule on behalf of respondent No.2.

2. The present petition is filed under Article 226 of the Constitution of India seeking direction to the respondents to correct and/or change the name of the petitioner from "Jugnashaben" to "Shilpaben" in the Birth Register and to issue a fresh Birth Certificate showing the name of the petitioner as Shilpaben.

3. It is the case of the petitioner that the petitioner was born on 05.11.1981 at Dharoli and her birth was registered with the respondent authority on 12.11.1981. At the time of the birth of the petitioner, her mother was residing at her maternal home and there the petitioner was given a nick name as Jugnashaben and the said name was also entered in the birth register. A birth certificate was also issued to the petitioner mentioning the name of the petitioner as Jugnashaben.

4. The petitioner was given the real name after following Hindu customs and usages according to "Chhatthi Pujan" after twelve days of her birth and her name was kept as Shilpaben, daughter of Mangrola Amarsinh Ramsinh. At the time of admitting the petitioner in the school, the said name of the petitioner was entered into the Register of the school authority as "Shilpaben". Thus, her correct name was continued throughout her studies till the petitioner has completed her education. The petitioner has further submitted that inadvertently the petitioner could not change and/or correct her name in the Birth Register after the petitioner was named as Shilpaben.

5. It is further stated that the petitioner wants to go abroad and, therefor, for the purpose of getting Visa she had submitted various documents before the American Counsel including her Passport, School Leaving Certificate and Birth Certificate. In the passport of the petitioner also, her name is mentioned as Shilpaben. The concerned authority in American Consulate pointed out the discrepancy in the name of the petitioner in the passport as also in the birth certificate and advised the petitioner to get it corrected.

6. In the above backdrop of the matter, the petitioner approached the respondent by way of an application requesting to correct her name in the Birth Register from "Jugnashaben" to "Shilpaben" as stated in

her School Leaving Certificate and other records as also in the passport. In support of the contention of the petitioner, the father of the petitioner has also filed an affidavit supporting the averments of the petitioner.

7. It is further stated that in response to the petitioner's application, respondent addressed a communication to the petitioner stating that for correcting the name in the Birth Register, an order of the competent Court would be required and in this view of the matter, the petitioner has filed the present petition before this Court.

8. Ms. Archana Amin, learned advocate appearing for the petitioner submits that relevant provisions are contained in Rule 12 for the purpose of correction or cancellation of entry in the register of Births and Deaths. It is specifically mentioned in Sub-rule (4) that "If any person asserts that any entry in the Register of Births and Deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under Sec.15 upon production by that person a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case." As per the provisions contained in the said Rule, the affidavit of two persons are required to be produced before the authorities. It is not clear from the record as to whether the petitioner has produced two affidavits before the authority as along with the petition, the affidavit of petitioner's father sworn on 28.02.2003 is produced. The petitioner is, therefore, directed to produce affidavit of two persons before the respondent authority.

9. Ms. Archana U. Amin, learned advocate appearing for the petitioner relied on the decision of this Court in the case of MULLA FAIZAL @ FAZILABANU SULEMAN IBRAHIM V/s. STATE OF GUJARAT & ORS., 2000 (2) G.L.R. 1553 wherein this Court has held as under :-

> "Since the respondent authorities, who are in charge of maintenance of Register of Births, have been enjoined with a duty to entertain applications for correction of entries in the Register and can for that purpose make necessary enquiries, the learned Single Judge was not right in relegating the appellant to a remedy of civil suit for seeking a declaration regarding his sex. The authorities, under the provisions of Sec. 15 read with Rule 12 of the Rules framed thereunder, are duty bound in law to make necessary enquiries

> and if necessary to obtain medical opinion to grant change of entry in the Birth Register regarding the sex of the appellant and to issue to him a corrected birth certificate. Here, the change in the entries in the Register is sought not on the basis of change of sex, but on the basis that the appellant was born as a natural male although with some deformity in his sexual organ. It would not be proper for the Court to relegate the appellant to an onerous remedy of civil suit, even if that be held to be available to him."

10. Ms. Phalguni Patel, learned AGP appearing for the respondent No.2 submits that since the statutory requirement has not been complied with by the petitioner as the affidavit of two persons are not filed, this Court should not issue any direction to the respondent authority either to change or to correct the name of the petitioner in the Certificate of Birth issued in favour of the present petitioner.

11. After having heard the learned advocates appearing for the respective parties and after having gone through the memo of petition as well as decision of this Court, I am of the view that in the application filed before the authority, the name was sought to be changed from "Jugnashaben" to "Shilpaben" and necessary affidavit of the father of the petitioner has been filed. However, two affidavits as contemplated in Sub-rule (4) of Rule 12 has not been filed. The respondent No.1 is hereby directed to make necessary enquiry and after having satisfied about it and after having obtained affidavits of two persons, make correction regarding the change in the name of the petitioner from "Jugnashaben" to "Shilpaben" in the register of Births and Deaths and issue fresh Birth Certificate in accordance with law.

12. With this direction, present petition is allowed. Rule is made absolute without any order as to costs. Direct Service is permitted.

[K. A. Puj, J.]

#Savariya#

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